



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: MARCH 15, 2023

IN THE MATTER OF:

Appeal Board No. 627234

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective August 1, 2022, on the basis that the claimant refused an offer of suitable employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by and on behalf of the claimant and on behalf of the employer. By decision filed December 16, 2022 (A.L.J. Case No. ), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked for her cousin's landscaping company from February 2021 until July 9, 2022. From the beginning of her employment until May 21, 2022, the claimant worked in the company's office as a general office worker; her duties included handling the employer's social media accounts. In this role, the claimant worked 11 hours per week and earned \$20 per hour. On May 22, 2022, the claimant began to work at the employer's nursery caring for the employer's greenhouses and selling flowers. In this role, the claimant worked between 24 and 30 hours per week at the rate of \$20 per hour. As of July 9, the claimant understood that her position at the farm had ended with the end of the planting season. However, the farm remained open. Although she had asked whether she should return to her office position

with the employer, the employer did not have her return. The claimant filed a claim for benefits on July 22, 2022.

On August 1, 2022, the employer learned of the claimant's unemployment insurance claim. That same day, the employer sent a text to the claimant advising her that she had just learned of the claim and stating that if the claimant was looking for employment, she could resume her duties at the company. The claimant indicated her confusion since she had asked to return to her position and had not heard back. The claimant and the employer went back and forth about how the claimant's employment had ended and then the employer told the claimant, "...I would like to offer your job back you can start tomorrow if you'd like (sic)". No other details of the offered job were provided to the claimant. The claimant responded, "LOL Be well." The claimant did not know which work location was offered or what her duties would be. The claimant did not return to work for the employer.

OPINION: The evidence fails to establish that the employer made a bona fide offer of suitable employment to the claimant. To constitute a bona fide offer of suitable employment, the employer must offer the claimant an available position with a specific start date, salary, location, and job duties (see, Appeal Board Nos. 575142 and 617586). Certain pertinent details of a job offer can be inferred when an employer offers a claimant a return to a previously held position. However, the claimant in this matter held two very distinct positions with the employer in the recent past. Even if it could be inferred that the start date of the offered job was August 2 given the wording of the text message itself and even if it could be further inferred that the claimant would be paid at the same hourly rate she had earned in both of her previous positions with the employer, we cannot infer the location, job duties or the number of hours per week the claimant was offered given the two previously held positions. The August 1 offer of re-employment did not include such details and there is nothing in the record to establish that the employer followed up their text offer with any other formal offer of employment. Since the claimant worked the two distinct jobs for the employer with vastly different hours and distinct duties depending on the location in which she worked, the claimant could not have known which of the two positions the employer was referring to when simply offering the claimant her job back. Accordingly, the employer's offer was not a bona fide offer of suitable employment for Unemployment Insurance purposes. Without a bona fide offer of employment, there can be no refusal of an offer. Accordingly, the claimant's failure to accept the offer does not constitute a refusal of suitable

employment without good cause and she is entitled to benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective August 1, 2022, on the basis that the claimant refused an offer of suitable employment without good cause, is overruled.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER